

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2292 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.JAIN

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No

J

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?No

DECEASED GUNVANTRAI MAGANLAL DESAI

Versus

URBAN LAND CEILING TRIBUNAL & EX OFFICIO SECRETARY

Appearance:

MR KK TRIVEDI for Petitioners

MR TH SOMPURA ASSTT. GOVT. PLEADER for Respondents.

CORAM : MR.JUSTICE R.R.JAIN

Date of decision: 07/04/97

ORAL JUDGEMENT

The order passed by the Tribunal (respondent No.1) on 29.1.1997 in Appeal No.Surat-8/1995 is under challenge in this petition under Articles 226 and 227 of the Constitution of India. By this order, the Tribunal treated the petitioners as an association of persons holding the land bearing property No.272 new No.318 of village Variaw, taluka Choryasi, district Surat admeasuring about 3780 square metres.

2. It is the case of the petitioners that their forefathers were protected tenants of the land and after their death the petitioners have acquired the tenancy rights as tenants-in-common and thus the property in the hands of the petitioners have become ancestral property as H.U.F. and thus every member of the family is entitled to get one unit under the Ceiling Act.

3. On perusal of the impugned order it is abundantly clear that ancestor of petitioners deceased Gunvantrai Maganlal Desai was held to be protected tenant and was in cultivation and possession of the suit land since last so many years as is evident from para 1 of the operative part of the order and still however the Tribunal holds that the property in question cannot be considered as an ancestral property or HUF property in the hands of the claimants. In my view, the view taken by the Tribunal runs quite counter to the decision of this High Court rendered in several cases. In the case of DEVSHANKAR GOVINDRAM BHATT v. STATE OF GUJARAT reported in 1993 (2) Gujarat Current Decision at page 774, this court has held that, admittedly, when the petitioners claim rights through the ancestral rights and on the basis of which they got the occupancy rights, the authority was not justified in finding that the property is not an ancestral property and accordingly the order was quashed. In an unreported judgment delivered in Special Civil Application No.3900 of 1984 (Coram: A.N.Divecha, J.) on 29.1.1994 also, identical view has been taken to the effect that, when the source of right in the hands of petitioners is from ancestors, it becomes ancestral property and while considering units the claimants should not be considered as an association of persons giving only one unit. As the law stands, all members of HUF or persons legally entitled to claim individual share in the ancestral property, shall be entitled to one unit as per the provisions of law. Accordingly, in my view, the observations made and the view taken by the Tribunal are clearly unreasonable, unjust, illegal, erroneous and cannot be sustained in law. Therefore, the petition requires acceptance.

4. In the result, this petition is allowed. The impugned order dated 29.1.1997 passed by the Tribunal in Appeal No.Surat-8/1995 Annexure-A and the order dated 10.6.1993 passed by the Competent Authority, Surat in Case No.8/1982 Annexure-B are quashed and set aside and the matter is remanded to the Competent Authority, Surat for fresh consideration in light of the observations made by this court. The Competent Authority is directed to

decide the matter in accordance with law within eight weeks from the date of receipt of writ from this court. Since the impugned orders on the basis of which consequential proceedings have already been initiated under Section 10 of the Urban Land (Ceiling and Regulation) Act, 1976 are quashed and set aside, all such consequential proceedings shall also stand quashed and set aside. Rule is accordingly made absolute with no order as to costs.